

August 25, 1998

PUBLIC UTILITIES COMMISSION
Voluntary Renewable Resource
Research and Development Fund
(Chapter 312)

NOTICE OF RULEMAKING

WELCH, Chairman; NUGENT, Commissioner

I. INTRODUCTION

In this Notice, we initiate a rulemaking to establish a program to which retail consumers of electricity may voluntarily contribute to fund renewable resource research and development.

During its 1997 session, the Legislature fundamentally altered the electric utility industry in Maine by deregulating electric services and allowing retail competition to begin on March 1, 2000.¹ The change in industry structure necessarily impacts the means by which the State has traditionally implemented its energy policy. In the past, utilities obtained their mix of generation resources through a least cost planning process that was subject to Commission oversight. In enacting the Restructuring Act, the Legislature recognized that, because generation services will be deregulated, energy policies can no longer be implemented through the regulation of utility resource acquisition decisions. As a consequence, the Act includes a provision on renewable resources and an explicit pronouncement of legislative policy:

In order to ensure an adequate and reliable source of electricity for Maine residents and to encourage the use of renewable and indigenous resources, it is the policy of this State to encourage the generation of electricity from renewable resources and to diversify electricity production on which residents of this State rely

35-A M.R.S.A. § 3210(1).

¹An Act To Restructure the State's Electric Industry (the Act), P.L. 1997, ch. 316 (codified as Chapter 32 of Title 35-A M.R.S.A. §§ 3201 through 3217).

To implement this policy, the Legislature directed the Commission to establish a program to which retail consumers of electricity may voluntarily contribute to fund renewable resource research and development.² The Act requires the Commission to adopt a mechanism for customers to indicate their willingness to contribute; to provide that transmission and distribution (T&D) utilities collect the contributions and forward them to the Commission; and to provide for a distribution of the funds to the University of Maine system, the Maine Maritime Academy or the Maine Technical College system.

According to 35-A M.R.S.A. § 3210(5), the rules adopted in this proceeding are routine technical rules pursuant to Title 5, Chapter 375, subsection II-A.

II. THE INQUIRY PROCESS

Prior to developing the proposed rule, we inquired in Docket No. 97-584 into the issues and approaches for implementing the renewable resource section of the Act. We received written comments from: the Public Advocate on behalf of members of the Electric Consumers Coalition,³ the State Planning Office, Central Maine Power Company, Bangor Hydro-Electric Company (BHE), Maine Public Service Company (MPS), Van Buren Light & Power District, Pamela Prodan, Frederick Munster, Coalition for Sensible Energy (CSE), Hans Nicolaisen, Independent Energy Producers of Maine (IEPM), FPL Energy Maine, MainePower and the Union of Concerned Scientist. After review of the written comments, the Commission convened a technical conference to further discuss the issues related to the renewable resource rules. The Public Advocate, State Planning Office, BHE, MPS, MainePower, Hydro-Quebec, IEPM, CSE, and Pamela Prodan attended the technical conference. As with our other inquiries regarding restructuring matters, the comments and input from interested parties helped us greatly to define and address the issues necessary to implement the legislative policies on renewable resources.

III. DISCUSSION OF INDIVIDUAL SECTIONS

²The Legislature also required that each competitive of electricity provider in the State provide no less than 30% of its retail sales in the State through renewable resources. 35-A M.R.S.A. § 3210(3). We will adopt rules governing the portfolio requirement in a separate rulemaking (Docket No. 98-619).

³The Public Advocate indicated that representatives of the American Association of Retired Persons, the Independent Energy Producers of Maine, the Coalition for Sensible Energy, the Industrial Energy Consumers Group, and Hans Nicolaisen participated in discussions that led to the Public Advocate comments.

A. Section 1: Purpose

The first section of the proposed rule summarizes the purpose of the Chapter as implementing the State's policy to encourage the development of renewable resources through the establishment of a research and development (R&D) fund in which customers may make voluntary contributions.

B. Section 2: Effective Date

Section 2 specifies that the program allowing for voluntary contributions to a renewable resource R&D fund will become effective on March 1, 2000, the date on which retail competition begins.

C. Section 3: Definitions

This section contains definitions of terms used in the proposed rule. The definitions are self-explanatory. To be consistent with legislative policy, renewable resource is defined with reference to the fuels or technologies listed in 35-A M.R.S.A. § 3210(2)(C).

D. Section 4: Transmission and Distribution Utility Obligations

Section 4 contains the obligations of T&D utilities to administer the voluntary contribution program. The proposed rule requires each T&D utility to allow for voluntary contributions to a R&D fund through a "check-off" mechanism whereby customers can choose: \$1.00, \$5.00, \$10.00 or "other" amount. If a customer chooses to make a contribution, the T&D utility will add the amount of the monthly contribution to the customer's bills every month for the following 12 months.

The proposed rule provides T&D utilities with an option of two mechanisms to implement the customer selection: 1) the check-off can be offered on their customers bill; or 2) the check-off can be provided on a postcard to be mailed directly to the utility. We have provided these options because, during the inquiry process, some utilities suggested that it would be very expensive to program their billing computers to allow for a check-off mechanism on the bills. In addition to one of the mechanisms specified above, the proposed rule allows utilities to use other methods to solicit contribution from customers. For example, a utility may consider use of the Internet for this purpose.

The proposed rule also requires utilities to provide its customers with the opportunity to choose to make voluntary contributions at least every quarter.

Under the proposed rule, utilities are required to develop educational materials to inform customers of the existence of the program and how to contribute to the fund. Utilities must distribute the materials to its customers at least every quarter and must submit a draft of the materials to the Commission for informational purposes at least three weeks before they are finalized.

Consistent with the provisions of section 3210, T&D utilities are required to transfer the funds to the Commission for distribution.

Finally, this section of the proposed rule specifies that T&D utilities may recover the reasonable costs of implementing the provisions of the rule from their ratepayers and that they must report to the Commission each year as to the numbers of customers participating in the program and amounts of contributions. We seek comment, however, on whether it would be more appropriate to pay for the utilities' costs of administering the program out of the contributions, rather than through generally applicable utility rates.

E. Section 5: Distribution of Funds

As required by section 3210, section 5 of the proposed rule specifies that the funds collected through the voluntary customer contributions will be distributed to the University of Maine system, the Maine Maritime Academy or the Maine Technical College system. The proposed rule states that the funds will be distributed through a grant proposal system that will be developed and administered by the State Planning Office. Finally, the section specifies that the State Planning Office will provide a status report to the Commission each year describing the grants provided under the program.

F. Section 6: Waiver or Exemption

This section contains the Commission's standard language for a waiver or exemption from the provisions of the Chapter that are not inconsistent with its purposes or those of Title 35-A.

G. Section 7: Tax Status

We seek comment on whether contributions to the voluntary R&D fund under the proposed rule would be tax-exempt or tax-deductible. If the contributions would not be tax-exempt or tax-deductible, or if the matter of tax status is unclear, we ask for comment on whether the proposed rule can be modified or the program structured so that contributions would be exempt or deductible from taxes.

IV. RULEMAKING PROCEDURES

This rulemaking will be conducted according to the procedures set forth in 5 M.R.S.A. §§ 8051-8058. A public hearing on this matter will be held on September 24, 1998 at 9:00 a.m. in the Public Utilities Commission hearing room.⁴ Written comments on the proposed rule may be filed until October 5, 1998. However, the Commission requests that comments be filed by September 21, 1998 to allow for follow-up inquiries during the hearing; supplemental comments may be filed after the hearing. Written comments should refer to the docket number of this proceeding, Docket No. 98-620, and sent to the Administrative Director, Public Utilities Commission, 242 State Street, 18 State House Station, Augusta, Maine 04333-0018.

Please notify the Commission if you need special accommodations to make the hearing accessible to you by calling 1-287-1396 or TTY 1-800-437-1220. Requests for reasonable accommodations must be received 48 hours before the scheduled event.

In accordance with 5 M.R.S.A. § 8057-A(1), the fiscal impact of the proposed rule is expected to be minimal. The Commission invites all interested persons to comment on the fiscal impact and all other implications of the proposed rule.

The Administrative Director shall send copies of this order and proposed rule to:

1. All electric utilities in the State;
2. All persons who have filed with the Commission within the past year a written request for Notice of Rulemaking;

⁴The Commission will hold three rulemaking hearings related to renewable resources in the following order: portfolio requirement (Docket No. 98-619), voluntary research and development fund (Docket No. 98-620), and net energy billing (Docket No. 98-621).

3. All persons on the Commission s list of persons who wish to receive notice of all electric restructuring proceedings;

4. All persons on the service list or who filed comments in the Inquiry, Public Utilities Commission, Inquiry into a Renewable Resource Portfolio Requirement, Docket No. 97-584;

5. All persons on the service list or who filed comments in the Inquiry, Public Utilities Commission, Inquiry into an Inquiry into Effects of Restructuring on Contracts between Qualifying Facilities and Electric Utilities, Docket No. 97-497;

6. The Secretary of State for publication in accordance with 5 M.R.S.A. § 8053(5); and

7. The Executive director of the Legislative Council, State House Station 115, Augusta, Maine 04333 (20 copies).

Accordingly, we

O R D E R

1. That the Administrative director send copies of this Notice and attached proposed rule to all persons listed above and compile a service list of all such persons and any persons submitting written comments on the proposed rule.

2. That the Administrative Director send a copy of this Notice of Rulemaking to the Secretary of State for publication in accordance with 5 M.R.S.A. § 8053.

Dated at Augusta, Maine this 25th day of August, 1998.

BY ORDER OF THE COMMISSION

Dennis L. Keschl
Administrative Director

COMMISSIONERS VOTING FOR: Welch
 Nugent